

IN THE SENATE OF THE UNITED STATES.

DECEMBER 22, 1857.—Ordered to be printed.

MR. MASON made the following

REPORT.

[To accompany Bill S. 28.]

*The Committee on Foreign Relations, to whom was referred the memorial of Alexander J. Atocha praying that his claims against Mexico, disallowed by the commissioners under the treaty of Guadalupe Hidalgo, may be investigated, and, if found just, paid by the United States, have had the same under consideration, and now report :*

That at the last session this case was fully examined by this committee, and a report made thereon, accompanied by a bill. On a re-examination the committee concur therein, and now make it part hereof, and report the same bill for the relief of the petitioner.

IN THE SENATE OF THE UNITED STATES, *January 14, 1857.*

*The Committee on Foreign Relations, to whom was referred the memorial of Alexander J. Atocha, praying that his claims against Mexico, disallowed by the commissioners under the treaty of Guadalupe Hidalgo, may be investigated, and if found just paid by the United States, have patiently considered the subject, and now report :*

That the memorialist was a citizen of the United States residing in Mexico, when, on the 26th of February, 1845, he received from that government an order "to leave the city of Mexico within the period of eight days for Vera Cruz, in order to depart from the republic."

It appears that the memorialist at the time protested, through Mr. Shannon, the American minister, against this order, as a violation of the treaty of April 5, 1831, between the United States and Mexico, and notifying the latter government that he would hold it responsible for the losses he might sustain by reason thereof.

Forced by this order to retire from the Mexican territory within the period of eight days, the memorialist alleges that he sustained great pecuniary loss; and that he filed his claim specifying such loss, with the vouchers sustaining the same, before the board of commissioners appointed under the treaty of Guadalupe Hidalgo, which he alleges

was unjustly rejected by that board, and he therefore petitions Congress for redress.

Believing that it would be dangerous to go behind the decision of the commissioners, unless it should appear that they have erred in the law applied to the case, your committee have examined with care the grounds assigned for an adverse decision in this case, and are satisfied that the commissioners erred in the law upon which they predicated their decision.

The commissioners assume, in their opinion, that the loss of the memorialist, by reason of his expulsion from Mexico, is established by the proofs filed by him, and decide against the validity of his claim exclusively upon the assumption that the order of expulsion was legal and proper, because, as they assume, of the complicity of the memorialist with Santa Anna in his resistance to the government *de facto* in their efforts to depose him as the president of the republic.

The commissioners assume that the connexion of the memorialist with the political movements of Santa Anna is established—first, by the fact that he remained there with Santa Anna until he was forced to abandon the government and leave the Mexican territory; and, secondly, because Mr. Shannon, the American minister, did not reply to a communication of the secretary for foreign affairs of Mexico, in which that officer, in acknowledging the receipt of the protest of the memorialist against the order of expulsion, says that Mr. Atocha “was one of the principal agents who wrought against the government, as is notorious, and *as his excellency Mr. Shannon himself well knows.*”

The error of the first of these assumptions of fact by the commissioners is now established by the certificate of the officer having charge of the archives of the Mexican government, which states that Mr. Atocha does not appear to have had any connexion with the movements of Santa Anna; and by the letter of Santa Anna himself, who, on the part of Mexico, made the treaty of Guadalupe Hidalgo, stating emphatically that Mr. Atocha never had any political connexion with him, and that he remained with him by his invitation, because “in those times of disorder and insubordination, he could not separate himself from him without imminent risk.”

The error of the second assumption of fact by the commissioners is established by the letter of our minister, Mr. Shannon, in which he expresses the conviction that the memorialist was not in any manner connected with the political movements of Santa Anna, and that he did not reply to the communication of the Mexican minister for foreign affairs, (not because he knew the correctness of his charge against Mr. Atocha,) but because the memorialist had left the country before the receipt of that communication, &c.

But, for the purpose of the argument, assume, contrary to the fact, that the commissioners were right in saying that Mr. Atocha was connected with the political movements of Santa Anna, will it follow that the government of Mexico was authorized to issue the order of expulsion against Atocha? The solution of this question will depend upon the construction of the treaty of 1831 between the United States and Mexico.

The 26th article of that treaty was intended to provide for the protection of the citizens of the two nations in the event of war between them, and the stipulation is: "That if war should break out between the two contracting parties, there should be allowed the term of six months to the merchants residing on the coast, and one year to those residing in the interior of the States and Territories of each other, respectively, to arrange their business, dispose of their effects, or transport them wheresoever they may please, giving them a safe conduct to protect them to the port they may designate. Those citizens who may be established in the States and Territories aforesaid, exercising any other occupation or trade, shall be permitted to remain in the uninterrupted enjoyment of their liberty and property so long as they conduct themselves peaceably and do not commit any offence against the laws; and their goods and effects, of whatever class and condition they may be, shall not be subject to any embargo or sequestration whatever, nor to any charge nor tax other than may be established upon similar goods and effects belonging to the citizens of the State in which they reside, respectively; nor shall the debts between individuals, nor moneys in the public funds, or in public or private banks, nor shares in companies be confiscated, embargoed, or detained."

During the late war with Mexico many citizens of the United States, who were residing as merchants in the territory of that republic at the time war was declared to exist between the two countries, were summarily expelled, in disregard of this stipulation of the treaty of 1831, and most of the claims presented to and allowed by the board of commissioners appointed under the treaty of 1848 were for damages consequent upon such violation of the treaty of 1831.

The 14th article of the treaty of 1831 was designed to secure to the citizens of the two republics, respectively, protection to their persons and property in time of peace; and, after stipulating for such protection, the two governments contract and agree "that the citizens of either party shall enjoy, *in every respect*, the same rights and privileges, either in prosecuting or *defending* their rights of person or of property, as the citizens of the country where the cause of action may be tried."

At the date of the order of expulsion of Mr. Atocha, Mexico and the United States were at peace with each other, and it necessarily follows, in the opinion of your committee, that for any offence with which he may have been charged Mr. Atocha was entitled, under this article of the treaty, to be tried, and to have afforded to him all the means of a fair trial which are provided for in that article.

It seems to your committee to be also very clear that the Mexican government, under this treaty stipulation, possessed no other or greater power to punish a citizen of the United States domiciled within her territory than she possessed to punish one of her own citizens for a similar offence; and they are advised that the Mexican government did not possess, under the constitution and laws of that republic, the power to expel a Mexican citizen without trial for any offence. Indeed, the minister for foreign affairs who issued the order of expulsion against Mr. Atocha, in response to the letter of the American minister, which had enclosed the protest of Mr. Atocha

against the legality of the order, and his notice of intention to claim damages for the losses which it would occasion him, says, "that his government is authorized by the laws and constitution of the republic to expel from its limits *non-naturalized foreigners* pernicious to the country."

For the reasons assigned, your committee are of opinion that the expulsion of Mr. Atocha from the Mexican territory was a violation of the stipulations of the 14th article of the treaty of 1831, and consequently that he should have been awarded by the board of commissioners organized under the treaty of Guadalupe Hidalgo such damages as he could show were sustained by him in consequence of that expulsion.

Your committee are advised that of the three and one quarter millions of dollars stipulated by the fifteenth article of the treaty of Guadalupe Hidalgo to be appropriated to the payment of claims of citizens of the United States against Mexico, the sum of about a quarter of a million of dollars still remains in the treasury, and consequently to that extent the fund set apart for that purpose still exists to indemnify Mr. Atocha, if he can establish his claim by satisfactory proofs.

Your committee have not deemed it their duty to investigate the quantum of indemnity to which Mr. Atocha may be entitled. And, it being conceded that he was and is a citizen of the United States, they have confined themselves to the inquiry, whether his claim was intended to be provided for by the treaty of Guadalupe Hidalgo, and the affirmative of this question is, in their opinion, clearly demonstrated by the papers and proofs in the case.

Among the papers filed by Mr. Atocha your committee find the instructions of Santa Anna, then the president of the republic of Mexico, to the minister of his government, charged with the negotiation of the treaty, directing him to have the name of Mr. Atocha inserted in the treaty as one whose claim was to be paid under its provisions, and they find other and repeated recognitions of its justice as against Mexico, from the obligations of which that government claims to be released, solely because of the release by the United States, in that treaty, of all claims of its citizens against Mexico. We find that Mr. Almonte, the accredited minister of that republic to this government, was instructed to see that this claim, "the most just of any which had been presented," should be paid from the fund which Mexico had provided by the sale of a part of her territory for the liquidation of claims of citizens of the United States against her.

With the presentation of another view of this subject your committee will close this report.

After the board of commissioners had closed their labors, many citizens of the United States whose claims had been rejected petitioned Congress to review the decision of that board, and the Senate of the United States appointed a special committee to sit during the recess of Congress, with power to send for persons and papers, and with instructions to examine each case and report such as, in their judgment, were entitled to relief.

That committee, in discharge of the duty assigned them, did inves-

tigate every claim which had been presented to the Senate for relief, and in every case, except this of Mr. Atocha, reported definitively. In his case no report was made because of an equal division of that committee upon his title to relief, so that this is the only case which has not received the supervision of the Senate, and it therefore appears to your committee that for this reason, also, the memorial is entitled to have his claim now investigated, and affirmatively decided upon by the government.

Your committee, in accordance with these views, have prepared, and submit herewith, a bill for the relief of the memorialist, which directs that his claim shall be investigated by the proper accounting officers of the treasury, and providing for the payment of such amount as shall be found due him; provided, that the amount so paid shall not exceed the balance of the fund provided by the treaty of Guadalupe Hidalgo which remains unapplied to the objects of that treaty.







